

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MICHAEL RICHARD,

Plaintiff,

v.

Case No. 12-12516

MICHAEL BOUCHARD, et al.,  
BRIAN SPIKER, DONALD SHELROWN,  
GREGORY SAKO, CRAIG J. HANSELMAN,  
and GREG A. SMITH

HONORABLE AVERN COHN

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 26)**  
**AND**  
**GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR**  
**SUMMARY JUDGMENT (Doc. 13)**

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff, proceeding pro se and without payment of fees, claims that several defendants violated his constitutional rights while a pretrial detainee in the Oakland County Jail. In essence, plaintiff alleges that he was placed in an overcrowded section of the jail (the “bullpen”) and forced to sleep on a brick floor, where he was eventually assaulted by other inmates for being a “snitch” after coming to the aid of another younger inmate who was previously assaulted. Plaintiff was severely injured as a result of the assault; he was hospitalized for several days before being returned to the jail.

The matter has been referred to a magistrate judge for all pretrial proceedings. All of the defendants Michael Bouchard, Brian Spiker, Donald Shelrown, Gregory Sako,

Craig J. Hanselman, and Greg A. Smith filed a motion for summary judgment (Doc. 13), which the magistrate judge correctly construed as a motion to dismiss. On September 3, 2013, the magistrate judge issued a report and recommendation (MJRR), recommending that the that the motion be granted as to Michael Bouchard and Brian Spiker, and that they be dismissed with prejudice. The magistrate judge also recommended that the motion be denied as to Donald Sheltroun, Gregory Sako, Craig J. Hanselman, and Greg A. Smith. Neither party has objected to the MJRR and the time for objections has passed.<sup>1</sup>

## II.

The failure to file objections to the MJRR waives any further right to appeal. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the MJRR releases the Court from its duty to independently review the motions. Thomas v. Arn, 474 U.S. 140, 149 (1985). However, the Court has reviewed the MJRR and agrees with the magistrate judge. As the magistrate judge explained, plaintiff has not alleged an actionable claim against Bouchard or Spiker. However, plaintiff has stated a plausible deliberate indifference claim against Sheltroun, Sako, and Hanselman as well as a plausible retaliation claim against these same defendants as a result of plaintiff's protected grievance activity. The magistrate judge also correctly concluded that plaintiff alleged a plausible claim

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<sup>1</sup>The MJRR stated that objections were to be filed within 14 days of service. The MJRR was mailed on both parties at their addresses of record on September 4, 2013. Accounting for service, objections were due at least by September 20, 2013. However, plaintiff filed a notice of change of address on September 16, 2013. To ensure that plaintiff received the MJRR and was given adequate time to file objections, the Clerk mailed a copy of the MJRR to plaintiff at his new address on September 24, 2013. To date, no objections have been filed.

against Smith for deliberate indifference arising out of a failure to treat.

III.

Accordingly, the findings and conclusions of the magistrate judge are ADOPTED as the findings and conclusions of the Court. Defendants' motion is GRANTED as to Michael Bouchard and Brian Spiker. Plaintiff's claims against them are DISMISSED WITH PREJUDICE. Defendants' motion is DENIED as to Donald Sheltroun, Gregory Sako, Craig J. Hanselman, and Greg A. Smith.

SO ORDERED.

s/Avern Cohn  
UNITED STATES DISTRICT JUDGE

Dated: October 31, 2013

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, October 31, 2013, by electronic and/or ordinary mail.

S/Sakne Chami  
Case Manager, (313) 234-5160